IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.07.2023
CORUM

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.969 of 2018

1. D.Jamuna Rani
2. S.Dakshinamoorthy ... Appellants

Vs.

1. ALM Company,
   Veppampattu
   No.10, Pilliyar Koil Street,
   Veppampattu,
   Thiruvallur.
   (R-1 remained exparte his presence may be dispensed with)

2. ICICI Lombard General Insurance Company Ltd.,
   84/85, Waltax Road, Chennai – 600 003.

... Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 21.04.2016, in M.A.C.T.O.P.No.498 of 2014, passed by the Motor Accident Claims Tribunal (II Additional District Judge), Poonamallee.

Appearance

For Appellants : M/s.A.Subadra
for M/s.M.Malar

For Respondent-1 : Ex parte

For Respondent-2 : Mr.B.Siva Kollappan

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal cum II Additional District Judge, Poonamallee. (henceforth, referred to as 'the Tribunal') in and by its award dated 21.04.2016, in M.A.C.T.O.P.No.498 of 2014, the present Appeal has been filed by the claimants, seeking enhancement of compensation.

2. On 30th March, 2014, about 13.30 hours, when D.Pandi (since deceased) was travelling as a pillion rider in a Motor Cycle, bearing Registration No.TN-10-AF-0605, from East to West direction on Ambathur to Thiruverkau Road, Therodum Veethi, near Sahana Bed Shop, first respondent's Tipper Lorry, bearing Registration No. TN-20-CV-6529 came in a rash and negligent manner, endangering the public safety and dashed against the deceased's motor cycle, due to which, the deceased fell down and died on the sport, as the Lorry tyre run over on his head.

3. At the time of the accident, the deceased was a Bachelor, aged about 23 years and he was a Welder, doing self business and earning a sum of Rs.10,000/- per month. Hence, the claimants, being parents of the deceased made a claim in a sum of Rs.10,00,000/- as compensation against the owner of the offending vehicle, first respondent as well as the insurer of the offending vehicle, viz., the second respondent herein.

4. The owner of the offending Vehicle, (viz., Lorry) remained absent before the Tribunal, and hence, he was set ex parte. The second respondent/Insurance Company, Chennai contested the claim petition by filing a counter statement, *inter alia* disputing their liability on the ground that since the deceased along with three more persons travelled in a motor cycle and that rider of the motorcycle attempted to overtake the Lorry in a rash and negligent manner, the accident had occurred, for which, second respondent cannot be mulcted with any liability and hence, prayed for dismissal of the claim petition together with costs.

5. On behalf of claimants, two witnesses were examined, viz., Jamuna Rani, mother of the deceased (P.W.1) and Kuzhandaivel, Eyewitness to the accident (P.W.2) and 8 documents were got marked as Exs.P.1 to P.8. None was examined on behalf of respondents, and no documents were exhibited either.

6. The Tribunal, on appreciation of both oral and documentary evidence has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tipper Lorry, belonging to the first respondent, and the second respondent, being the Insurer of the Lorry, is liable to pay the compensation. By coming to such a conclusion, the Tribunal has made calculation under different heads and passed an award for a total sum of Rs.12,77,000/- with interest at the rate of 7.5% p.a. from the date of claim petition (i.e. 30.06.2014) till the date of deposit, as compensation.

6.1 The break up details of the compensation amount awarded by the Tribunal are as follows:-

S.No	***Head***	***Amount granted***
1.	Loss of income	Rs.10,50,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Transportation	Rs. 10,000/-
4.	Love and affection (claimants 1 and 2)	Rs. 2,00,000/-
5.	Damage to clothes	Rs. 2,000/-
Total		**Rs.12,77,000/-**

7. Finding the compensation amount as insufficient, the present Appeal has been filed by the claimants/appellants, as stated above.

8. As the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, this Court is not traversing into the other aspects of the award passed by the Tribunal.

9. M/s.A.Subadra, learned counsel appearing on behalf of appellants/claimants submitted that the Tribunal, while determining the compensation towards Loss of Income, fixed the notional income of the deceased at Rs.8,750/- by taking the daily income of the deceased at Rs.350/- per day, which is meager. The learned counsel would submit that the deceased was a Welder, doing own business and normally, a Welder would earn more than Rs.350/- per day, whereas, the Tribunal, without considering the same, on its own accord, taken the daily income of the deceased at Rs.350/- and fixed the notional income of the deceased. In this connection, learned counsel placed reliance on the decision of the Honourable Supreme Court, in the case of **Syed Sadiq Vs. United India Insurance Company,** reported in **2014 (1) TNMAC 459 (SC),** wherein, the Honourable Supreme Court even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the notional monthly income at Rs.6,500/-. The learned counsel, therefore, submitted that, when the Hon'ble Apex Court took notional income of a vegetable vendor as

Rs.6,500/- during the year 2008, the notional income fixed by the Tribunal at Rs.8,750/-, for a Welder, who died in the accident occurred in the year 2014 is meager and requires modification.

9.1 The learned counsel also relied on a decision rendered by the Hon'ble Division Bench of this Court, in the case of **Chinnathamani and two others Vs. Amman Grantes and another** reported in **2019 2 TNMAC 293,** wherein, Cost of Inflation Index issued by the Central Board of Direct Tax is taken into consideration while determining the notional income of the deceased. Thus, by relying the said decision, the learned counsel prayed that some reasonable sum may be fixed towards the notional monthly income of the deceased by providing appropriate weightage to the increased cost of living.

9.2 Further, the learned counsel submitted that the Tribunal, while determining compensation under the head, 'Loss of Income', has adopted wrong multiplier of '15' by taking into consideration the age of the mother of the deceased as '42' at the time of filing the claim and as per the law laid down by the Hon'ble Supreme Court, in the case of **Sarala Verma Vs. Delhi Transport Corporation** reported in **[(2009) 5 LW 561],** the age of the deceased alone should be taken inconsideration for fixing the multiplier and not the Dependants' age. Hence, learned counsel for the appellants/claimants submitted that, in the present case, since the deceased is aged about 23 years, the correct multiplier that has to be applied is '18'.

9.3 Further, the learned counsel submitted that, the Tribunal, while determining the compensation towards Loss of Income, has failed to add any amount towards future prospects, which also resulted in awarding an inadequate compensation of Rs.10,50,000/-. In support of her contention that 40% should be added towards Future Prospects, she has placed reliance on the ratio laid down by the Honourable Supreme Court, *in re* **National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601.**

9.4 It is also the grievance of the learned counsel for the appellants that no compensation has been awarded towards Loss of Estate. Therefore, by averring so, the learned counsel prayed for appropriate modification of the award passed by the Tribunal.

10. Mr.B.Siva Kollappan, learned counsel for the second respondent/Insurance Company submitted that, though he has not filed any Cross Appeal against the compensation awarded by the Tribunal, however, he contended that compensation awarded towards love and affection at a sum of Rs.2,00,000/- is on the higher side and against the principle laid down by the Hon'ble Supreme Court, in the case of **(Magma General Insurance Co. Ltd., Vs. Nanu Ram @ Chuhru Ram),** as in the said decision, it is held that only a maximum of Rs.40,000/- can be awarded towards Filial Consortium. Hence, the learned counsel prays for appropriate reduction of the compensation awarded by the Tribunal towards Love and Affection. Insofar as the compensation awarded by the Tribunal under other heads, viz., i) Funeral expenses, ii) Transportation and iii) Damages to clothes are concerned, the learned counsel submitted that has no objection as the same are just and fair.

10.1 As regards the contention of the learned counsel for the appellants that the Tribunal has applied wrong multiplier of '15' is concerned, he fairly admits that the multiplier adopted by the Tribunal is wrong and it should be '18'. Insofar as the contention of the learned counsel for the appellants that the Tribunal has fixed the daily income of the deceased at Rs.350/-, it is contended that since the deceased was only a self-employed (Welder) and that there is no tangible evidence to show that the deceased was earning Rs.10,000/- per month, the Tribunal has rightly taken the daily income of the deceased at Rs.350/- and fixed the notional monthly income of the deceased at Rs.8,750/- and arrived at a compensation of Rs.10,50,000/- towards Loss of Income, and the same requires no interference.

11. Heard the learned counsel for the appellants/claimants and the learned counsel for the second respondent/Insurance Company.

12. The deceased, D.Pandi is Self-employed (Welder) and was earning Rs.10,000/- per month. However, since the claimants failed to produce any supportive document in this regard, the Tribunal, while determining the compensation towards Loss of Income, taken the daily income of the deceased at Rs.350/- and fixed the notional income of the deceased at Rs.8,750/- and awarded compensation. However, this Court is of the view that fixation of Rs.8,750/- towards the notional income of the deceased, who died in the accident during the year 2014, by taking his day's income at Rs.350/- is too low. In fact, the Hon'ble Apex Court, in the case of ***Syed Sadiq's*** case (cited supra) fixed the notional monthly income even for a vegetable vendor at Rs.6,500/-, who sustained injuries in the accident occurred in the year 2008, in the absence of any proof for income.

12.1 Since, in the case on hand, the claimant was a Welder, this Court deems it fit to fix the notional monthly income of the claimant, by providing appropriate weightage to the increased cost of living as sought for by the learned counsel for the appellants. Therefore, by following the ratio laid down by the Hon'ble Supreme Court, in ***Syed Sadiq's*** **case *(cited supra)*** and by applying the cost inflation index method, as per decision rendered in **Chinnathamani's case (cited supra),** which is '220 for the year 2013-14 and '129' for the year 2008-09, the notional monthly income of the deceased is calculated in the following manner:-

The notional income fixed by the Hon'ble Supreme Court for the vegetable vendor, i.e. Rs.6,500/- for the year 2008	X	Cost Inflation Index for the year 2013-14 ------------------------- Cost Inflation Index for the year 2007-08

Rs.6,500/- x 220/129 = Rs.11,085/-

12.2 Therefore, this Court fix the notional income of the claimant for the year 2013-14 at Rs.11,085/-. However, since the learned counsel for the second respondent/Insurance Company made a request to fix reasonable sum towards notional income of the deceased, to which, learned counsel for the appellants is also agreable, this Court to inclined to fix notional monthly income of the deceased at Rs.10,000/-.

12.3 So far as the multiplier adopted by the Tribunal is concerned, this Court is of the view that the Tribunal ought not to have taken into consideration the age of the deceased's mother while fixing the multiplier for determining the compensation towards the head, 'Loss of Income' and as held by the Hon'ble Supreme Court in the case of **Sarala Verma's case (cited supra),** the age of the deceased alone should be taken inconsideration for fixing the multiplier, and in the present case, since the deceased is aged 23 years, right multiplier that has to be applied is '18'.

12.4 As rightly contended by the learned counsel for the appellants the Tribunal failed to add any compensation towards Future Prospects, while awarding compensation towards Loss of Income. Therefore, as per ratio laid down by the Honourable Supreme Court of India in **Pranay**

Sethi's case's, wherein, it is held that atleast 40% should be added towards Future Prospects, this Court is inclined to award 40% towards future Prospects in the present case as well.

12.5 Thus, by fixing the notional monthly income of the deceased at Rs.10,000/-; adding 40% towards future prospects; deducting 50% towards personal expenses (since the deceased is a Bachelor) and by applying right multiplier of '18' (since the deceased is aged 23 years), the total loss of income of the deceased is calculated as under:-

Notional Monthly income + 40% future prospects
works out to **Rs.13,200/- (i.e. Rs.10,000/- + Rs.3,200)**

Multiplier of '18' and Deduction of 50% towards personal expenses
13,200 x 12 x1/2 x 18/100 = Rs.15,12,000/-

Loss of income = Rs.15,12,000/-

12.6 Consequently, the sum of Rs.10,50,000/- awarded by the Tribunal under the head of 'Loss of Income' is hereby modified and enhanced to Rs.15,12,000/-.

12.7 As rightly contended by the learned counsel for the appellants, the Tribunal has failed to award any compensation towards i) Loss of Estates. Hence, this Court is inclined to award a sum of Rs.15,000/- under the head 'Loss of Estate'.

12.8 So far as the compensation awarded under the head i) Love and Affection is concerned, as rightly pointed out by the learned counsel for the second respondent/Insurance Company, the Tribunal has awarded an exorbitant sum of Rs.2,00,000/- and the same is reduced to Rs.40,000/-each to both the claimants.

12.9 Insofar as the compensation awarded by the Tribunal towards i) Funeral Expenses, ii) Transportation and iii) Damages to Clothes, the same remains unaltered.

13. Thus, the total compensation payable to the claimants is as hereunder:-

S.No	***Head***	***Amount granted***
1.	Loss of income	Rs.15,12,000/-

S.No	***Head***	***Amount granted***
2.	Funeral Expenses	Rs. 15,000/-
3.	Transportation	Rs. 10,000/-
4.	Love and affection (for parents)	Rs. 80,000/-
5.	Damage to clothes	Rs. 2,000/-
6	Loss of Estate	Rs. 15,000/-
Total		**Rs.16,34,000/-**

13.1 Consequently, the total compensation amount of Rs.12,77,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.16,34,000/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, out of which, the first claimant/mother of the deceased is entitled to Rs.10,00,000/- together with proportionate interest and 2nd claimant/father of the deceased is entitled to Rs.6,34,000/- plus proportionate interest.

14. In the result, the Civil Miscellaneous Appeal is partly allowed on following terms:-

i) The second respondent, ICICI Lombard General Insurance Company Ltd., is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any. Upon which, the Tribunal shall transfer the amount to the claimants' respective bank accounts through RTGS within a period of two weeks thereon.

ii) It is made clear that if the second respondent/Insurance Company fails to make payment within the stipulated time, they are liable to pay interest for the delayed payment.

iii) Since the claimants by way of filing C.M.P.No.9580 of 2017, has sought for amendment of the claim from Rs.9,00,000/- to Rs.21,00,000/- and the said Petition is ordered by this Court, vide order, dated 13.07.2017 the claimants are directed to pay the requisite court fee, if any, within one week before the date of receipt of a copy of this judgement.

iv) The appellants/claimants are entitled to withdraw their respective share as apportioned by this Court with proportionate interest accrued thereon by making necessary application before the Tribunal.

v) Since this Appeal has been filed with a delay of 257 days, the appellants/claimants shall forgo the interest for the delay period, as already stated by this Court while condoning the delay, in its order, dated 21.03.2018, made in C.M.P.No.13741 of 2017 in C.M.A.Sr.No.41034 of 2017.

vi) However, there shall be no order as to costs.

03.07..2023

Internet : Yes / No
Index : Yes / No
sd

To
The Motor Accident Claims Tribunal
II Additional District Judge, Poonamallee.

Krishnan Ramasamy, J.,

sd

C.M.A.No.969 of 2018

03.07..2023